124

No. 08-882

Supreme Court, U.S.
FILED
APR 17 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

MAUREEN O'DWYER, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

MAUREEN O'DWYER
pro se

5939 Vicksburg Street,
New Orleans, LA 70124
(504) 484-1053

CURRY & TAYLOR • (202) 393-4141

GROUNDS FOR PETITION FOR REHEARING

Petitioner avers that the grounds for this Petition for Rehearing comply with the provisions of Rule 44(2) of the Supreme Court Rules, because intervening circumstance of a substantial or controlling effect, or to other substantial grounds not previously presented to this Honorable Court, exists, namely:

> The erroneous rulings in the Courts below were "tainted" by judicial misconduct in the Courts below, all as is meticulously set forth in separate Complaint(s) of Judicial Misconduct filed in the United States Court of Appeals for the Fifth Circuit on April 14, 2009 and on April 16, 2009, respectively, attached as Exhibit Nos. 1 and 2.

ARGUMENT

The underlying case being the subject of this Petition for Rehearing is part of the "Victims of KATRINA" litigation which originated in the United States District Court for the Eastern District of Louisiana, with a decision adverse to Petitioner in the District Court being appealed to the United States Court of Appeals for the Fifth Circuit. Petitioner only recently "connected the dots" to identified serious judicial misconduct in both the District Court and the Court of Appeals. See Exhibit Nos. 1 and 2.

In short, the District Court and the Court of Appeals are hopelessly corrupted and polluted, not only by judicial misconduct, which violated Federal Judges' oaths of office and the Canons contained in the "Code of Conduct for United States Judges," but which also involves violation of multiple sections of Title 18, United States Code. Petitioner respectfully submits that the issues raised in this Petition for Rehearing require the exercise of this Court's supervisory jurisdiction so that the confidence of the public in the independence and integrity of the entire Federal judicial process will be maintained, rather than shaken to its very foundations.

Respectfully submitted,
Maureen O'Dwyer
In propria persona
5939 Vicksburg Street
New Orleans, LA 70124
Telephone: (504) 228-5939

CERTIFICATION OF PETITIONER

COMES NOW Petitioner herein, and certifies that the foregoing Petition for Rehearing of the Order Denying Petitioner's Petition for Writ of Certiorari complies with Rule (44) of this Honorable Court, and that same is limited to the requirements thereof. Petitioner herein further certifies that this Petition is presented in good faith and not an attempt in delay.

Respectfully submitted,

Maureen O'Dwyer

Exhibit 1 US Court of Appeals for the Fifth Circuit, Complaint(s) of Judicial Misconduct filed 4/14/2009

COMPLAINT(S) OF JUDICIAL MISCONDUCT

COMES NOW Ashton R. O'Dwyer, Jr., appearing *in propria persona* pursuant to the provisions of the "Rules Governing Complaints of Judicial Misconduct," who does declare under penalty of perjury, pursuant to the provisions of 28U.S.C. §1746, the truth and correctness of the following:

1. That the following Judges of the United States Court of Appeals for the Fifth Circuit[1] are guilty of judicial misconduct by virtue of the violation of their oath of office, violation of the Canons contained in the "Code of Conduct for United States Judges," as well as conspiracy to commit same:

James L. Dennis in Case Nos. 08-30052, 07-30349, and 08-30362;
Rhesa H. Barksdale in Case No. 08-30052;
Emilio M. Garza in Case No. 08-30052;
Thomas M. Reavely in Case No. 08-30052;
Carolyn Dineen King in Case Nos. 07-30349 and 08-30362; and

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[1] Complainant acknowledges the probability that other Federal officials, such as members of the Court's or the Judges' Staff, are also guilty of misconduct; however, no complaint against those officials is being made at this time.

Jennifer Walker Elrod in Case Nos. 07-30349 and 08-30362.

2. The misconduct complained of herein took place during the pendency of the referenced cases at New Orleans, Louisiana, and where the Judges maintain their offices, if elsewhere than New Orleans.

3. The misconduct complained of herein consisted of prohibited *ex parte* communications between and among the Judges identified herein and all or some of the following, which communications were known by the Judges to be prohibited, because they involved the merits of the cases identified herein and how the outcome(s) in those cases could be improvidently influenced by others:

a) One or more members of the Louisiana Supreme Court, including particularly, but without limitation, now Chief Justice Catherine D. Kimball, and/or her surrogates, and/or the surrogates of other members of the Louisiana Supreme Court;

b) One or more employees of the Office of Disciplinary Counsel for the Louisiana Supreme Court, including particularly, but without limitation, Chief Disciplinary Counsel Charles B. Plattsmier, Jr., and/or his surrogates, and/or the surrogates of other employees of the Office of Disciplinary Counsel;

c) Employees of the State of Louisiana, including particularly, but without limitation, employees of the Louisiana Department of Justice and/or State employees within the Executive, Judicial and/or

Legislative Branches of Louisiana State Government, and/or their surrogates;

d) Members of the Plaintiffs' Bar of the State of Louisiana, including particularly, but without limitation, those Members of the Plaintiffs' Bar who represent the interests of plaintiffs, claimants and potential class members in the "Victims of KATRINA" litigation pending in the United States District Court for the Eastern District of Louisiana, but who simultaneously represented the interests of the State of Louisiana between August 29, 2007 and October 9, 2008, and/or Members of the Louisiana Bar who signed fee-sharing agreements with such Plaintiffs' Bar members, and/or any of their surrogates;

e) Members of the United States District Court for the Eastern District of Louisiana and/or Members of the Staff of that Court, including particularly, but without limitation, Stanwood R. Duval, Jr. and his spouse and law clerk, Janet Daley Duval, and/or their surrogates; and

f) Other members of the United States Court of Appeals for the Fifth Circuit and/or their surrogates.

4. In support of these complaints of misconduct, and to specifically avoid running afoul of Rules 2(D) and 3(D) of the Rules Governing Complaints of Judicial Misconduct, Complainant incorporates herein by reference thereto the following Exhibits, copies of which will be submitted if requested by the Chief Judge:

Exhibit No. 1 – Transcript of Statement given under Penalty of Perjury by Ashton R. O'Dwyer, Jr., to the Louisiana Department of Justice on October 14, 2005;

Exhibit No. 2 – Record Document No. 114 in Civil Action 06-7280, in the Eastern District of Louisiana, being the Complaint in that action;

Exhibit No. 3 – Sworn Affidavit of Complainant's Law Enforcement Expert, David R. Kent, dated August 20, 2007;

Exhibit No. 4 – Sworn Affidavit of Complainant's Law Enforcement Expert, David R. Kent, directed to the issue of discovery dated, December 19, 2007;

Exhibit No. 5 – Unsworn Declaration Under Penalty of Perjury made pursuant to 28 U.S.C. §1746 by Complainant's Law Enforcement Expert, David R. Kent, on March 4, 2009;

Exhibit No. 6 – Complainant's Un-refuted Motion to Strike False and Defamatory Allegations in Case No. 08-30052;

Exhibit No. 7 – Judge Dennis' Order of September 22, 2008, summarily denying Exhibit No. 6;

Exhibit No. 8 – Complainant's Motion for Disclosure in Case No. 08-30052;

Exhibit No. 9 – Complainant's E-mail to Deputy Clerk Michael Brown, in Case No. 08-30052, referencing Complainant's Motion for Disclosure by Judge Dennis;

Exhibit No. 10 – The Court's Order of December 18, 2008, summarily denying Exhibit No. 8;

Exhibit No. 11 – Complainant's correspondence in Case No. 08-30052 to the Clerk of the 5th Circuit dated September 24, 2008;

Exhibit No. 12 – Complainant's November 10, 2008 correspondence in Case No. 08-30052 to the Clerk of 5th Circuit; and

Exhibit No. 13 – Complainant's Petition for Panel Rehearing and/or for Rehearing En Banc in Case No. 08-30052, together with attached Exhibits.

Complainant avers that the Chief Judge should not act on the complaints alleged herein without review of the Exhibits identified *supra*, which Complainant is prepared to submit to the Chief Judge, if requested, but which are not attached hereto in order to avoid running afoul of the provisions of Rules 2(D) and 3(D) of the Rules Governing Complaints of Judicial Misconduct.

5. Complainant further avers that the Court's decisions in Case Nos. 08-20052, 07-30349 and 08-30362 were the result of judicial misconduct, and at least peripherally related to the following issues in Civil Action No. 06-7280 and 05-4182 (and consolidated cases) pending in the United States District Court for the Eastern District of Louisiana:

1) A criminal gangland-style "hit" which was executed by the Louisiana State Police against Complainant at five minutes past midnight on September 20, 2005, on orders from persons employed

by the Louisiana Department of Justice, by the Louisiana Supreme Court and by the Office of Disciplinary Counsel for the Louisiana Supreme Court;

2) A patently obvious non-consentable, concurrent conflict of interests on the part of certain so-called prominent Members of the Plaintiffs' Bar who simultaneously represented plaintiffs, claimants and potential class members in the "Victims of KATRINA" litigation bearing Civil Action No. 05-4182 (and consolidated cases) in the U.S. District Court for the Eastern District of Louisiana, as well as the interests of the State of Louisiana, between August 29, 2007 and October 9, 2008[2];

3) Bias, prejudice and partiality, and other judicial misconduct, warranting the recusal of Stanwood R. Duval, Jr., in the "Victims of KATRINA" litigation[3]; and

4) Claims asserted by Complainant and his clients against the State of Louisiana, its agencies and instrumentalities, political subdivisions, and individual department heads, in the "Victims of KATRINA" litigation.

6. By virtue of their having participated in prohibited *ex parte* communications as described, *supra*, and allowing those communications to influence their decision-making on the merits in the referenced cases, the Judges identified herein each violated the

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[2] This issue is articulately pleaded in Civil Action N0. 08-4728 on the Eastern District docket.

[3] Ibid.

following Canons contained in the Code of Conduct for United States Judges:

Canon 1 - was violated by each of the accused Judges, who made a mockery of the terms "independent," "honorable," "justice," "high standards of conduct," and "integrity," as a result of the misconduct alleged herein.
Canon 2(A) - was violated by each of the accused Judges, because they neither respected nor complied with the law, and because the misconduct alleged herein is the antithesis of acting "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
Canon 2(B) - was violated by each of the accused Judges, because they allowed social or other relationships to influence their judicial conduct and judgment, and because they not only conveyed to others the impression that they were in a special position of influence, and did nothing to stop that impression, but then acted in an official capacity to advance the private interests of others.
Canon 3(A)(1) - was violated by each of the accused Judges, because not only did they make a mockery of the terms "faithful" and "professional competence in the law," but they permitted their decision-making to be dictated by partisan interests.
Canon 3(A)(4) - was violated by each of the accused Judges, because they engaged in prohibited *ex parte* communications with others on the merits, and procedures affecting the merits, of proceedings pending before them. Judges Dennis, Barksdale, Garza, and Reavely also violated Canon 3(A)(4) by conspiring with others to deny Complainant oral argument in Case No. 08-30052. Judges Dennis, King and Elrod also violated

Canon 3(A)(4) by conspiring with others to deny Complainant oral argument in Case No. 08-30362.
Canon 3(B)(1), (2), and (3) - were violated by each of the accused Judges, because they took no action after learning of misconduct by Brother and/or Sister Judges, Court officials and Staff, lawyers and others.

7. The Complaints of judicial misconduct contained herein are not made for the purpose of seeking review of the erroneous decisions involving Complainant and his clients by the Judicial Council of the Fifth Circuit,[4] but rather to instill public confidence in the integrity and independence of judges, and to ensure that judges comply with their oath of office, the law, and the applicable Code of Conduct.

8. More to the point, Complainant avers that although reasonable minds might conclude that the misconduct alleged herein is peripherally related to merits of the decisions in the referenced cases, Complainant specifically avers that his allegations of misconduct are NOT DIRECTLY RELATED TO the decisions in those cases, but rather to the lack of integrity of the accused Judges and of those who wrongfully influenced them.

9. Complainant avers that the Chief Judge should appoint a Special Committee (or Committees) to investigate these complaints and to make recommendations to the Judicial Council. Notwithstanding, this requested relief, Complainant avers that he has no confidence in the ability of the

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[4] However, Complainant avers that judicial review of the erroneous decisions is absolutely warranted under the facts and circumstances.

Chief Judge of the United States Court of Appeals for the Fifth Circuit, any Special Committee which may be appointed by the Chief Judge, or of the Judicial Council of the Fifth Circuit to competently, fairly and impartially investigate and decide the merits of the complaints of misconduct contained herein. In support of these assertions, Complainant refers to the September 28, 2007 Order of Reprimand and Reasons by the Judicial Council in the matter involving former Judge Samuel B. Kent who, since the referenced Order of Reprimand and Reasons, and more particularly on February 23, 2009, pleaded guilty of one count of obstruction of justice, thus demonstrating the abject incompetency of the judicial misconduct process within the Fifth Circuit. Complainant further avers that any investigation(s) by the Special Committee or Committees should also include the appointment of competent forensic experts to analyze office computers, personal computers and blackberries, as well as telephone records, of the accused Judges and others, in order to "test" their answers to questions under oath with extrinsic electronic and documentary evidence.

10. Complainant declares that the allegations, averments and statements contained herein are true and correct under penalty of perjury pursuant to the provisions of 28 U.S.C. §1746.

Exhibit 2 US Court of Appeals for the Fifth Circuit, Complaint(s) of Judicial Misconduct filed 4/16/09

COMPLAINT(S) OF JUDICIAL MISCONDUCT

COMES NOW Ashton R. O'Dwyer, Jr., appearing *in propria persona* pursuant to the provisions of the "Rules Governing Complaints of Judicial Misconduct," who does declare under penalty of perjury, pursuant to the provisions of 28U.S.C. §1746, the truth and correctness of the following:

1. That the following Judges of the United States Court of Appeals for the Fifth Circuit[5] are guilty of judicial misconduct by virtue of the violation of their oath of office, violation of the Canons contained in the "Code of Conduct for United States Judges," as well as conspiracy to commit same:

James L. Dennis[6] in Case Nos. 06-30840, 06-30841, and 08-30234
Jacques L. Weiner, Jr., in Case No. 08-30234.
W. Eugene Davis in Case Nos. 06-30840 and 06-30841.
Edward C. Prado in Case No. 08-30234.

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[5] Complainant acknowledges the probability that other Federal officials, such as members of the Court's or the Judges' Staff, are also guilty of misconduct; however, no complaint against those officials is being made at this time.

[6] Complaint(s) of Judicial Misconduct against Dennis were filed on April 14, 2009 in three other cases. The "common denominator" in the clear majority of cases in which Judicial Misconduct is complained about is the name "James L. Dennis," which Complainant avers is a statistical impossibility unless Dennis is guilty of the conduct complained of herein beyond all reasonable doubt.

Leslie L. Southwick in Case Nos. 06-30840 and 06-30841.
Will Garwood in Case No. 08-30234.
Ron Clark[7] in Case Nos. 06-30840 and 06-03841.

2. The misconduct complained of herein took place during the pendency of the referenced cases at New Orleans, Louisiana, and where the Judges maintain their offices, if elsewhere than New Orleans.

3. The misconduct complained of herein took place during the pendency of the referenced cases at New Orleans, Louisiana, and where the Judges maintain their offices, if elsewhere than New Orleans.

4. The misconduct complained of herein consisted of prohibited *ex parte* communications between and among the Judges identified herein and all or some of the following, which communications were known by the Judges to be prohibited, because they involved the merits of the cases identified herein and how the outcome(s) in those cases could be improvidently influenced by others:

g) One or more members of the Louisiana Supreme Court, including particularly, but without limitation, now Chief Justice Catherine D. Kimball, and/or her surrogates, and/or the surrogates of other members of the Louisiana Supreme Court;

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[7] District Judge from the Eastern District of Texas, who sat on the United States Court of Appeals for the 5th Circuit by designation.

h) One or more employees of the Office of Disciplinary Counsel for the Louisiana Supreme Court, including particularly, but without limitation, Chief Disciplinary Counsel Charles B. Plattsmier, Jr., and/or his surrogates, and/or the surrogates of other employees of the Office of Disciplinary Counsel;

i) Employees of the State of Louisiana, including particularly, but without limitation, employees of the Louisiana Department of Justice and/or State employees within the Executive, Judicial and/or Legislative Branches of Louisiana State Government, and/or their surrogates;

j) Members of the Plaintiffs' Bar of the State of Louisiana, including particularly, but without limitation, those Members of the Plaintiffs' Bar who represent the interests of plaintiffs, claimants and potential class members in the "Victims of KATRINA" litigation pending in the United States District Court for the Eastern District of Louisiana, but who simultaneously represented the interests of the State of Louisiana between August 29, 2007 and October 9, 2008, and/or Members of the Louisiana Bar who signed fee-sharing agreements with such Plaintiffs' Bar members, and/or any of their surrogates;

k) Members of the United States District Court for the Eastern District of Louisiana and/or Members of the Staff of that Court, including particularly, but without limitation, Stanwood R. Duval, Jr. and his spouse and law clerk, Janet Daley Duval, and/or their surrogates; and

l) Other members of the United States Court of Appeals for the Fifth Circuit and/or their surrogates.

5. In support of these complaints of misconduct, and to specifically avoid running afoul of Rules 2(D) and 3(D) of the Rules Governing Complaints of Judicial Misconduct, Complainant incorporates herein by reference thereto the following Exhibits, copies of which will be submitted if requested by the Chief Judge:

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6. Complainant further avers that the Court's decisions in Case Nos. 06-30840, 06-30841, and 08-30234 were the result of judicial misconduct, and at least peripherally related to the following issues in Civil Action No. 06-7280 and 05-4182 (and consolidated cases) pending in the United States District Court for the Eastern District of Louisiana:

1) A criminal gangland-style "hit" which was executed by the Louisiana State Police against Complainant at five minutes past midnight on September 20, 2005, on orders from persons employed by the Louisiana Department of Justice, by the Louisiana Supreme Court and by the Office of Disciplinary Counsel for the Louisiana Supreme Court;

2) A patently obvious non-consentable, concurrent conflict of interests on the part of certain so-called prominent Members of the Plaintiffs' Bar who simultaneously represented plaintiffs, claimants and potential class members in the "Victims of KATRINA" litigation bearing Civil Action No. 05-4182 (and consolidated cases) in the U.S. District Court for the Eastern District of Louisiana, as well as the interests of the State of Louisiana, between August 29, 2007 and October 9, 2008[8];

3) Bias, prejudice and partiality, and other judicial misconduct, warranting the recusal of Stanwood R. Duval, Jr., in the "Victims of KATRINA" litigation[9]; and

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[8] This issue is articulately pleaded in Civil Action N0. 08-4728 on the Eastern District docket.

[9] Ibid.

4) Claims asserted by Complainant and his clients against the State of Louisiana, its agencies and instrumentalities, political subdivisions, and individual department heads, in the "Victims of KATRINA" litigation.

7. By virtue of their having participated in prohibited *ex parte* communications as described, *supra*, and allowing those communications to influence their decision-making on the merits in the referenced cases, the Judges identified herein each violated the following Canons contained in the Code of Conduct for United States Judges:

Canon 1 - was violated by each of the accused Judges, who made a mockery of the terms "independent," "honorable," "justice," "high standards of conduct," and "integrity," as a result of the misconduct alleged herein.
Canon 2(A) - was violated by each of the accused Judges, because they neither respected nor complied with the law, and because the misconduct alleged herein is the antithesis of acting "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
Canon 2(B) - was violated by each of the accused Judges, because they allowed social or other relationships to influence their judicial conduct and judgment, and because they not only conveyed to others the impression that they were in a special position of influence, and did nothing to stop that impression, but then acted in an official capacity to advance the private interests of others.
Canon 3(A)(1) - was violated by each of the accused Judges, because not only did they make a mockery of

the terms "faithful" and "professional competence in the law," but they permitted their decision-making to be dictated by partisan interests.

Canon 3(A)(4) - was violated by each of the accused Judges, because they engaged in prohibited *ex parte* communications with others on the merits, and procedures affecting the merits, of proceedings pending before them. Judges Davis, Southwick and Clark also violated Canon 3(A)(4) by conspiring with others to deny Complainant oral argument in Case Nos. 06-30840 and 06-30841. Judges Weiner, Prado and Southwick also violated Canon 3(A)(4) by conspiring with others to deny Complainant oral argument in Case No. 08-30234.

Canon 3(B)(1), (2), and (3) - were violated by each of the accused Judges, because they took no action after learning of misconduct by Brother and/or Sister Judges, Court officials and Staff, lawyers and others.

8. The Complaints of judicial misconduct contained herein are not made for the purpose of seeking review of the erroneous decisions involving Complainant and his clients by the Judicial Council of the Fifth Circuit,[10] but rather to instill public confidence in the integrity and independence of judges, and to ensure that judges comply with their oath of office, the law, and the applicable Code of Conduct.

9. More to the point, Complainant avers that although reasonable minds might conclude that the misconduct alleged herein is peripherally related to merits of the decisions in the referenced cases, Complainant specifically avers that his allegations of

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[10] However, Complainant avers that judicial review of the erroneous decisions is absolutely warranted under the facts and circumstances.

misconduct are NOT DIRECTLY RELATED TO the decisions in those cases, but rather to the lack of integrity of the accused Judges and of those who wrongfully influenced them.

10. Complainant avers that the Chief Judge should appoint a Special Committee (or Committees) to investigate these complaints and to make recommendations to the Judicial Council. Notwithstanding, this requested relief, Complainant avers that he has no confidence in the ability of the Chief Judge of the United States Court of Appeals for the Fifth Circuit, any Special Committee which may be appointed by the Chief Judge, or of the Judicial Council of the Fifth Circuit to competently, fairly and impartially investigate and decide the merits of the complaints of misconduct contained herein. In support of these assertions, Complainant refers to the September 28, 2007 Order of Reprimand and Reasons by the Judicial Council in the matter involving former Judge Samuel B. Kent who, since the referenced Order of Reprimand and Reasons, and more particularly on February 23, 2009, pleaded guilty of one count of obstruction of justice, thus demonstrating the abject incompetency of the judicial misconduct process within the Fifth Circuit. Complainant further avers that any investigation(s) by the Special Committee or Committees should also include the appointment of competent forensic experts to analyze office computers, personal computers and blackberries, as well as telephone records, of the accused Judges and others, in order to "test" their answers to questions under oath with extrinsic electronic and documentary evidence.

11. Complainant declares that the allegations, averments and statements contained herein are true and correct under penalty of perjury pursuant to the provisions of 28 U.S.C. §1746.